

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DUSTIN FOCKLER,

Plaintiff,

v.

UNITED STATES MARSHAL SERVICE,

Defendant.

Civil Action No. 05-123 Erie

MEMORANDUM ORDER

This Federal Tort Claims Act matter was received by the Clerk of Court on April 22, 2005, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 15], filed on March 20, 2006, recommended that Defendant's motion to dismiss [Doc. No. 8] be granted, and that Plaintiff's motion to amend complaint [Doc. No. 14] be denied as futile. The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendant. Plaintiff was subsequently granted an extension until April 26, 2006 to file objections [Doc. No. 16]. No objections were filed. After de novo review of the complaint and documents in the case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 28th day of April, 2006;

IT IS HEREBY ORDERED that Defendant's motion to dismiss is GRANTED, and Plaintiff's motion to amend the complaint is DENIED as futile.

The Report and Recommendation [Doc. No. 15] of Magistrate Judge Baxter, filed on March 20, 2006, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge